

Remarks

Claims 21-29 were provisionally rejected on the ground of nonstatutory obviousness-type double patenting over claim 1 of copending application 10/544,400 in view of YUKISHIGE et al. JP 61-291966. A Terminal Disclaimer accompanies this response in the Appendix. Reconsideration and withdrawal of the rejection are respectfully requested.

Claims 21-29 were rejected as unpatentable over SUZUKI et al. 6,648,975 in view of YUKISHIGE et al. and IIJIMA et al. ("Nano-aggregates of single-walled graphitic carbon nano-horns," Chemical Physics Letters, 309 (1999) 165-170.) Reconsideration and withdrawal of the rejection are respectfully requested.

One of skill in the art would not have combined the secondary references with SUZUKI et al. because the device in SUZUKI et al. does not have the problem of soot build-up and thus there is no reason to turn to the secondary references.

SUZUKI et al. disclose a device for fabricating a quantum dot functional structure (Abstract) that finds use as the active layer of an optically functioning device such as a laser (column 18, lines 7-12.) A quantum dot functional structure is made up of very fine silicon particles that are evaporated in the device; there are no soot-like particles. One of skill in the art would be aware of this and would know that in this device soot-like substances would not adhere to and build on the laser beam window. That is, there is no soot build-up in the device in

SUZUKI et al. Knowing that soot build-up does not occur, the artisan would not turn to the further references to solve a problem that does not exist. The mere knowledge that a protective pipe exists (YUKISHIGE et al.) is not motivation to modify the SUZUKI et al. device to include the pipe. There must be some reason for the artisan to make the modification. Since the soot build-up does not occur, there is no reason to modify the SUZUKI et al. device and the claims avoid the rejection under §103.

In view of the foregoing remarks, it is believed that the present application is in condition for allowance. Reconsideration and allowance are respectfully requested.

The Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 25-0120 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17.

Respectfully submitted,

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TWP/dp

Appendix

- a Terminal Disclaimer.